IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1859 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARESH @ NARENDRAKUMAR S/O. SHANTILAL NANCHAND JAIN - Appellant(s)
Versus
CHANDULAL DAHYABHAI PATEL & 2 - Defendant(s)

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Appearance :

MR BAIJU S JOSHI for Appellant(s) : 1,
None for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/07/2007

ORAL JUDGMENT

1. Shri Baiju S. Joshi, learned counsel for the appellant; none for the respondents though

served.

2. The injured claimant, being aggrieved by the award dated 29.11.84 passed by the M.A.C.Tribunal, Himmatnagar [S.K.] in M.A.C. Petition No. 410 of 82 is before this Court seeking enhancement of the compensation.

3. From the records, it does not appear that anybody has challenged the findings recorded against the interest of the respondent either by filing Cross Objections or by filing a counter appeal, under the circumstances, this Court is not required to detail the facts regarding the accident, nature of the injuries suffered and the liability of the other side.

4. Shri Baiju S. Joshi, learned counsel for the appellants, after taking me through the evidence submits that the Tribunal was not justified in awarding a sum of Rs. 20,000/- only towards pain, shock and suffering and loss of amenities and enjoyment of life. He submits that the claimant before this Court had suffered number of the fractures and had suffered the impact of the injuries for almost about 18 months and as

a result of the disability suffered by the claimant, he had to close one of his studios from where he was earning a good amount. He also submits that despite the doctor's statement of permanent disability to the extent of 13%, the Tribunal erred in holding that overall disability would be 1/2, that is, 6-1/2 per cent.

5. From the finding of the Tribunal, it would clearly appear that the injured had suffered contused lacerated wound 1/4 inches on left cheek which was skin deep and fresh; DTS left lumber region lateral aspect and in upper part of the left thigh; tenderness under right thigh lateral aspect upper part. On X-ray examination, it was revealed that there were fractures of pelvis and fractures of second, third and fourth ribs on left side gangrene of intestine terminal 1-1/2 ft. with rupture of dome of urinary bladder. According to the doctor, injuries were repaired, urinary bladder was reconstructed and thereafter follow-up treatment was given. The patient was again examined on 5.1.84, that is,

almost one and half year of the accident and it was found that heap flexion was limited by 50; there was bony bump near the limited posterior-superior aliac-spine and spinal movements were full. The Tribunal, on the basis of the further X-ray examination, found: lateral transverse process of 5th lumber vertebra; iliac-wing; both ilio-public and issio-public rami of pelvis. On the basis of these injuries and suffering for a period of 18 months, in the opinion of this Court, the award of Rs. 20,000/- is towards the lower side. On that count, in the considered opinion of this Court, the appellant would be entitled to a sum of Rs. 30,000/-.

6. Towards pecuniary loss, taking the disability to be 6-1/2%, the Tribunal allowed a sum of Rs. 10,800/- but in the opinion of this Court, if injury is termed to be 13% and as permanent one, then, the claimant would be entitled to just double the amount and his claim would be Rs. 21,600/-. The Tribunal even while finding that the claimant had suffered pecuniary loss, erred in awarding pecuniary loss at the rate of Rs.

60/- per month. In fact, under the said head, he should have been entitled to a sum of Rs. 9,000/-.

7. On due consideration, the appellant would be entitled to Rs. 29,800/- in addition to what has been awarded to him by the Tribunal.

8. The appeal is partly allowed with a direction that the respondent would be liable to pay the said amount to the appellant with interest at the rate of 6% per annum as awarded by the Tribunal from the date of the Claim Petition till the date of award. The appeal to the extent indicated above is allowed. No costs.

[R.S. GARG, J.]

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